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OFFICE OF PETITIONS

In re Application of
Gerard F. Barry et al.
Application No. 10/622,201
Filed: July 18, 2003
Attorney Docket No. 11899.0175.REUS07

**DECISION ON
PETITION**

This is a decision on the petition filed June 10, 2004, under 37 CFR 1.53, requesting a filing date of July 18, 2003 for the above identified application.

Application papers in the above-identified application were filed on July 18, 2003. However, on May 10, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application had not been accorded a filing date because a complete specification as prescribed by 35 U.S.C. 112 had not been filed. The Notice indicated that a Specification with at least one claim was required.

Petitioner argues that a copy of U.S. Patent 5,633,435, containing the specification and claims from that patent were included with the application on filing.

A review of the file reveals that the specification which includes claims and remarks on pages numbered 2-15 had been made a part of the record and thus was not missing from the application when filed. Additionally, petitioners assertion that the application had been filed with a specification is corroborated by a properly proffered date stamped return receipt.

In view of the foregoing, the petition under **37 CFR 1.53** is **GRANTED**.

Given the basis for granting the petition, no petition fee is due and none will be charged.

The application is being returned to the Office of Initial Patent Examination for

correction of the filing date and a correction of PTO records to show that the specification was submitted with the application on filing.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of July 18, 2003, using the application papers received in the Office on that date, including the pages of claims and remarks found in the file (numbered 2-15. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions